

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONY D. WINTERS,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:06cv428
vs.	:	
	:	District Judge Susan J. Dlott
WARDEN, NOBLE CORRECTIONAL	:	
INSTITUTE,	:	
	:	
Respondent(s).	:	

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Hogan. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on August 1, 2007 a Report and Recommendation (Doc. 11). Subsequently, the Petitioner filed objections to such Report and Recommendation (Doc. 12).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

Accordingly, Respondent's motion to dismiss (Doc. 5) is **GRANTED** to the extent that the claim alleged in Ground One of the petition is **DISMISSED** with prejudice as time-barred under 28 U.S.C. § 2244(d). Petitioner's remaining non-time-barred claims alleged in Grounds Two and Three of the petition are also **DISMISSED** with prejudice under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

Petitioner's "Motion to Exercise his Constitutional Right to Redress his Grievances Against the State for Constitutional Violations" (Docs. 8 and 9) is **DENIED**.

A certificate of appealability should not issue with respect to any Order adopting this Report and Recommendation to dismiss Ground One of the petition with prejudice on procedural statute of limitations grounds, because under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason" would not "find it debatable whether this Court is correct in its procedural ruling" or whether the otherwise-barred ground for relief states a "viable claim of the denial of a constitutional right" or is "adequate to deserve encouragement to proceed further." *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983). *See also* 28 U.S.C. § 2253 (c); Fed. R. App. P. 22(b).

A certificate of appealability also will not issue with respect to any Order adopting this Report and Recommendation to summarily dismiss petitioner's remaining claims alleged in Grounds Two and Three of the petition with prejudice under Rule 4 of the rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254, because petitioner has not made a substantial showing of the denial of a constitutional right in either of these grounds. *See id.*

The Court certifies pursuant to 28 U.S.C. § 1915 (a)(3) that an appeal of any Order adopting this Report and Recommendation will not be taken in "good faith" and therefore,

DENIES petitioner leave to proceed on appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F. 3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge